

# Patent aggregation and its impact on competition and innovation policy

**Group Work 2**

**Morning session**

**Rapporteur:** Geertrui Van Overwalle

## Questions

## Types of patent aggregators

What types of patent aggregators (in the broad sense, including patent brokers, patent pools, patent funds and offensive and defensive aggregators) are currently present in Europe

### ‘In Europe’?

- Based in Europe?
- Operating/licensing in Europe?



## Comparison Europe - US

Are the activities of patent aggregators increasing in Europe?

How does Europe compare to the US in terms of presence of patent aggregators?

## Topics

## 1. Definitions

- Aggregator
  - Bring patents that were initially obtained by a number of *different* parties under the control of a *single* actor/entity: general agreement
  - Commercial/non-commercial objective: irrelevant. Include both:
    - For-profit aggregator
    - Not-for profit aggregator: PIPRA

## 1. Definitions

- Defensive versus offensive aggregators
  - Defensive (to provide freedom to operate)/Offensive (to monetize): not optimal; labels not helpful
  - Patent brokers, patent pools, patent funds: assess case by case

## 2. 'Non practicing' entities/aggregators

- When did entity emerge?
  - Not recent/recent
- How many clients?
  - Varies: from few to 160 licensees to 1400...
  - Geographically spread
- Who are your clients?
  - Both smaller entities (SMEs) global clients
- How do you acquire patents?
  - Often patents are mainly 'offered' (finding over the internet, reading a magazine, ..)
  - Sometimes particular technologies are screened for patents

## 2. 'Practicing' entities/aggregators

- How do you acquire patents?
  - Try to collect patents from European players (buy from universities, SME's – one stop shop)
  - Acquisitions of strong/key IP portfolios
- Patent pools: usually originate outside Europe, serve global markets, offer licenses to European (MPEG, SISVEL,
- Patent funds: active in Europe (France Brevets) and Asia
- Aggregators/intermediaries: IPXI, Intellectual Ventures, serve European markets

### 3. Business models

- Different models
  - Investment company/venture capitalist
  - Catch and release/catch and exploit
  - Patent factories
  - ...
- Great variety of business models; difficult to design a commonly agreed typology of business models  
 [Why so difficult? Business model closely related to the very operational essence and know-how of aggregators]

### 3. Business models

- Complex landscape
  - Focus on: different IP services and activities
  - Rather than on: business models and entities
- Relevant question becomes
  - Focus on: harmful/non harmful activities
  - Rather than on business model/ type of aggregator (law firms, aggregators, patent brokers, patent finders, patent investors, software companies, patent attorneys..)

## 4. Technology sector

- *All* technology sectors are involved

## 5. Effect UPP

- To be seen...

# Patent aggregation and its impact on competition and innovation policy

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**Afternoon session**

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## Question 1



## Cost and benefits

What are the costs and the benefits of the various forms of patent aggregation?

[Benefits to *innovation*, costs to *innovation*]

## 1. Aggregator point of view

- Benefits

- Existing innovations

1. Exploitation/monetizing innovation which would otherwise not/not easily reach market
2. Create further incentive to innovate

- Ideas

1. Assist on the path from idea to invention/patent/market: from bench to bedside

# 1. Aggregator point of view

- Costs
  - Aggregator services cost
  - Assertion with low quality patent – forced, regardless of quality of patent, to file suit; to respond to no good patents

## Different aggregators

### 1. State funded patent aggregator (IP investment fund)

- Benefits for innovation
  - Aggregation component
    - Innovators with patents may not have expertise to exploit/monetize: provides income, generates fund further innovation
    - Incentive to innovate further, similar to venture capitalist: path to innovation is shown
    - Similar to venture capitalist
  - Patent development assistance – ‘Patent factories’
    - Assist from idea to product: universities, companies [TTO operates on own risk]
    - No support for production and manufacturing
- Costs
  - Assertion with low quality patent

## Different aggregators

### 2. Patent monetisation entity (privately funded)

- Benefits for innovation
  - Build patents/design patent strategy: from idea to product
  - Supporting companies SME, also in case of infringement
- Costs
  - Non-enforcement of certain patents

## Different aggregators

### 3. Non assertive IP (patents, TMs, know how, ...) monetisation firm

- Profile
  - Activity: not acquire patents, take exclusive licenses, then obtain right to not exclusively license them /stock market like
  - Goal: disrupt inefficient non-transparent bilateral licencing model
  - Concept: Unit License Right: in legal terms gives right to use patents in production of predetermined amount of products
- Benefits
  - Benchmarks for IP valuation
  - Level playing field: All licensees have same contract terms
  - Reduce litigation driven licensing
  - Transparent market place for tech transfer on standard terms

## Different aggregators

### 4. Mixed model (both monetize and exploit)

- Benefit
  - Monetisation
  - Dissemination of inventions, via non-exclusive licenses: make sure as many people are helped as possible
  - Second life from innovation: second source of income via outlicensing of non-core application of the core technology
    - Automobile paint/patents for skin cancer/
  - Financial engineering instruments
    - Buying a patent = extra income stream
  - Building awareness
  - More strategic choices
- Cost
  - Uncertainty

## User point of view

- Benefits
  - Level playing field - depends on type of aggregation
    - Pools: transparent price – competitors pay *as much* as you do
    - Aggregators using litigation model: force you to make decisions you would not have to make in bi-lateral situations
  - Aggregation leads to redistribution of profit

## User point of view

- Disadvantage
  - Aggregator (working on bilateral licensing basis): *different* deals may be struck amongst different users

## Question 2

## Competition and innovation policy

What are the challenges for competition and innovation policy



- Delivering a product to the market
  - Issues is not: to produce cement, to aggregate technologies/patents
  - Issue is: do you come together to set prices, form cartels when producing cement? when aggregating technologies/patents
- Are there restrictions in the market?
  - Very difficult to figure out?
  - How do you fix a price?